

Insights

USTR BEGINS FOUR-YEAR REVIEW OF SECTION 301 TARIFFS ON CHINESE IMPORTS, SOLICITING REQUESTS FOR CONTINUATION

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The U.S. Trade Representative (USTR) has [announced](#) that beginning May 7, 2022, it will accept requests from members of the domestic industry that have benefitted from the current Section 301 tariffs on imported goods of Chinese origin to continue those tariffs. Absent any such request, the tariffs will expire on the respective four-year anniversary of the imposition of each tariff, specifically July 6, 2022 or August 23, 2022.

As industry is acutely aware, and as we have reported [here](#) and [here](#), the United States has in place special tariffs of up to 25 percent on \$370 billion of Chinese-origin goods under Section 301 of the Trade Act of 1974, 19 U.S.C. § 2411, levied in retaliation for Chinese government intellectual property practices that a USTR investigation had found were unreasonable or discriminatory and burdened or restricted U.S. commerce. The USTR initially imposed the tariffs in two tranches, the first on July 6, 2018 ([List 1](#)) and the second on August 23, 2018 ([List 2](#)); and later imposed two further tranches, a third on September 24, 2018 ([List 3](#)) and a fourth on September 1, 2019 ([List 4A](#)). Lists 1 and 2 are the two “actions” the USTR identifies in the May 5, 2022 [Federal Register](#) notice; importantly, the notice characterizes Lists 3 and 4A, which were issued more than a year following the beginning of the underlying investigation, as “modifications” to both the List 1 and List 2 actions.

Under Section 307(c), each action automatically terminates at the end of four years unless, during the final 60 days of the respective four-year period, the party that petitioned for the action—here the USTR itself—or “any representative of the domestic industry which benefits from such action” requests that it continue. Thus, , the USTR will be accepting requests for continuation of List 1 from May 7, 2022 through July 5, 2022, and of List 2 from June 24, 2022 through August 22, 2022. As we understand the notice, a party may submit a request only on an action from which it has benefitted, whether List 1 (which includes Lists 3 and 4) or List 2 (which also includes Lists 3 and 4), or both separately, but does not need to address any specific product. The USTR is providing individual notice to all parties that have previously commented in support of the tariffs.

If no request is received for a given action the tariffs will terminate at the conclusion of the respective period, although, based upon the historical intensity of support for and opposition to the tariffs, it is all but certain that such a request will be made. In that case, the USTR will continue the tariff pending a review that considers the effectiveness of the action in achieving the objectives of Section 301, other actions that could be taken, and the effects of such actions on the United States economy, including consumers. *Any* interested party, including those in opposition to the tariffs, whether or not it previously participated, will have the opportunity to comment during this review.

Judging by recent comments of several Biden Administration officials, that such a review would favor reducing or terminating the Section 301 tariffs appears likely, although opposition exists. In April, Deputy National Security Advisor Daleep Singh questioned the “strategic purpose” of most of the tariffs, following which Treasury Secretary Janet Yellen said removing the tariffs was “worth considering,” particularly to address inflation. USTR Katherine Tai appears to be warming to the idea as well, saying in May that “we can look at” them also to fight inflation. This comes on top of the Administration’s reported decision in March to delay a new Section 301 investigation on Chinese industrial subsidies, the recent renewal of 352 product exclusions from the tariffs, and a Senate push during conference discussions on the United States Innovation and Competition Act of 2021 to expand the exclusion process. Furthermore, in a challenge to Lists 3 and 4 by over 3500 importers, on April 1, 2022 the U.S. Court of International Trade ruled that the USTR failed to justify those actions to the public and directed USTR to provide a more comprehensive explanation or risk having the tariffs found unlawful.

The experienced international trade team at BCLP is available to guide parties through the Section 301 tariff review process, including by assisting in submitting comments in the review once it commences.

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